



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/595,481

04/21/2006

Reinhard Schubbach

SCHUBBACH

1273

20151 7590 08/20/2008

HENRY M FEIEREISEN, LLC

HENRY M FEIEREISEN

708 THIRD AVENUE

SUITE 1501

NEW YORK, NY 10017

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,481	<b>Applicant(s)</b> SCHUBBACH ET AL.	
	<b>Examiner</b> WALTER B. AUGHENBAUGH	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24 and 34-53 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 44-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/30/06</u> .                                                 | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claim 24 and newly submitted claims 44-53 are directed to an invention that is independent or distinct from newly submitted claims 34-43. Claims 44-53 correspond to original Group I (method claims), and claim 24 is a subcombination of claims 34-43.
2. Claims 34-43 (Group III) and Group II (claim 24) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require that the container comprises the polymer-based compound recited in claim 24. The subcombination has separate utility such as the material of a small plastic container (for, for example, eye contact lenses, etc., and not a large pallet container).
3. Applicant's Representative elected Group III, claims 34-43, without traverse in a telephone conversation with Examiner on August 14, 2008.
4. The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a

Art Unit: 1794

claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 34, 36, 37 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms “easy”, “easily”, “cold-impact-resistant”, and “high” in “high molecular weight” in claim 34, “slightly” in claim 36, “limited” in claim 37, and “thin-walled” in claim 43 are relative terms which render the claims indefinite. The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1794

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claims 34-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oishi et al. (5,744,504) in view of Endo et al. (USPN 6,344,508).

In regard to claim 34, Oishi et al. teach a multilayer container that corresponds to the claimed multilayer inner container (col. 68, line 64-col. 69, line 7 and col. 68, lines 16-40). Oishi et al. teach that the exterior layer comprises an antistatic compound (col. 32, lines 51-66).

Oishi et al. fail to explicitly teach the combination of a pallet, lattice frame and the multilayer inner container, and that the multilayer container comprises a cold-impact-resistant HDPE material.

Oishi et al., however, teach that the plastic article can be a part or component of transportation equipment or a container.

Endo et al., however, teach a resin composition comprising an antistatic agent (col. 10, lines 40-56) that is formed into a container or a pallet (col. 7, lines 38-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined a pallet, lattice frame and the multilayer inner container of Oishi et al. since a pallet is a part or component of transportation equipment, and pallets are known to be used to carry containers as taught by Endo et al., and since the frame would be used to secure the container to the pallet.

In regard to the claimed cold-impact-resistant HDPE material, Endo et al. teach that HDPE is a suitable material for the container (col. 6, lines 9-26), Therefore, it would have been

Art Unit: 1794

obvious to one of ordinary skill in the art at the time the invention was made to have used HDPE as a material of the container of Oishi et al. since HDPE is a suitable material for antistatic additives as taught by Endo et al.

In regard to claim 35, Oishi et al. fail to explicitly teach that the multilayer container comprises a LDPE or LLDPE.

Endo et al. teach that LDPE is a suitable material for the container (col. 6, lines 9-26), Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used LDPE as a material of the container of Oishi et al. since LDPE is a suitable material for pallets and containers as taught by Endo et al.

In regard to claims 36-38, Oishi et al. teach that the article comprises the claimed additives. See entire reference.

In regard to claims 39-42, since the container taught by Oishi et al. and Endo et al. are containers (and additionally, containers for shipping), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the thickness of the layers, and the relative thicknesses of the layers of the wall, in order to achieve the desired degree of strength of the container (or desired degree of other properties such as thermal insulation, degree of antistatic capability, etc.) depending upon the particular material intended to be shipped, and the amount of material to be shipped. MPEP 2144.05 II.B.

In further regard to claim 41, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have varied the size of the container depending upon the particular amount of material to be shipped.

Art Unit: 1794

In regard to claim 43, since the container taught by Oishi et al. and Endo et al. are containers, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added the appropriate fill port/s and other ports appropriate for the particular material intended to be shipped.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /  
Examiner, Art Unit 1794

8/18/08